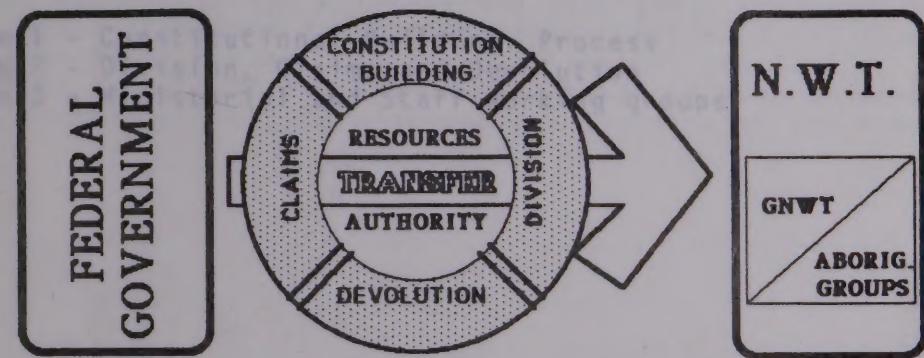


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A SESSIONAL PAPER:

CONSTITUTIONAL AND POLITICAL
DEVELOPMENT IN THE
NORTHWEST TERRITORIES



Prepared for the Seventh Session
of the
Tenth Legislative Assembly
of the Northwest Territories

March 7, 1986

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FOREWORD

GNWT POLITICAL AND CONSTITUTIONAL OBJECTIVES

The GNWT mandate in constitutional and political development is to provide for the development of systems and structures of public administration accountable to the Legislative Assembly and responsive to the needs and aspirations of all N.W.T. residents.

The Constitution Act 1871 gives Parliament sole authority for providing for the administration, peace, order and good government of the Territories which are not provinces. Parliament also has sole authority for legislating a new constitution for the N.W.T., short of provincehood. The Constitutional Act, 1982 requires provincial agreement where new provinces are created. It follows that if there is dissatisfaction with current constitutional arrangements, the GNWT, the Constitutional Alliance and aboriginal organizations have the responsibility for recommending constitutional change to the Parliament of Canada. These organizations are linked together in pursuit of constitutional change through comprehensive aboriginal claims, devolution, and division of the N.W.T.

1. In the design of public structures, consideration shall be given to allow variations to reflect differing interests, priorities and customary methods of decision making.
2. Processes of political and constitutional reform shall be open to allow individuals and organizations to make known their respective interests and concerns.
3. All parties (federal and territorial governments and aboriginal organizations COC, TFN, Dene Nation, and NWT Native Association) must have input into formal discussions where powers are being sought by the Government of the Northwest Territories which directly affect aboriginal rights or where aboriginal people are seeking to have aboriginal rights incorporated into public institutions.
4. Comprehensive claims, the transfer of powers, constitutional development and division of the Northwest Territories are all integral parts of the process of political and constitutional reform in the N.W.T. and must be pursued with in a co-ordinated way. (Please refer to Diagram 1 and 2.)

GNWT POLITICAL AND CONSTITUTIONAL OBJECTIVES

It is a basic requirement of the political and constitutional process that N.W.T. residents have opportunities to participate in government and influence public decisions at the community, regional, territorial and national level equal to those enjoyed by other Canadians. Specific objectives are as follows:

- 1) To recognize and respect aboriginal rights in comprehensive claims settlements and in the Canadian Constitution.
- 2) To respond to recommendations from the Constitutional Alliance respecting division and constitutional development.
- 3) To respond to the unique communities of interest that exist within in the N.W.T. by creating public policy and styles of public administration that reflect those communities of interest while maintaining a harmonious balance between them.

PRINCIPLES

1. Political and constitutional development must be advanced in ways that will protect aboriginal rights and enhance the cultures and lifestyles of the aboriginal people of the N.W.T.
2. In the design of public structures, consideration shall be given to allow variations to reflect differing interests, priorities and customary methods of decision making.
3. Processes of political and constitutional reform shall be open to allow individuals and organizations to make known their respective interests and concerns.
4. All parties (Federal and Territorial governments and aboriginal organizations COPE, TFN, Dene Nation, and NWT Metis Association) must have input into formal discussions where powers are being sought by the Government of the Northwest Territories which directly affect aboriginal rights or where aboriginal people are seeking to have aboriginal rights incorporated into public institutions.
5. Comprehensive claims, the transfer of powers, constitutional development and division of the Northwest Territories are all integral parts of the process of political and constitutional reform in the N.W.T. and must be proceeded with in a co-ordinated way. (Please refer to Diagrams 1 and 2.)

6. The Legislative Assembly has the authority and responsibility to represent the interests of all N.W.T. residents in forming and, through the Executive Council, implementing public policy.
7. Public governments in the N.W.T. must retain authority over fiscal and economic policy in order to maintain efficiency in provision of public service and to ensure equality of opportunity and distribution of benefits to N.W.T. residents.

CONSIDERATIONS

The government of Canada has made commitments to settle claims being made by the Aboriginal people and at the same time to transfer some powers to the Government of the Northwest Territories. However, certain Aboriginal rights and interests are being negotiated through the claims process which will affect future powers and responsibilities of government. Similarly, there are issues before the territories through the devolution process which may affect Aboriginal rights.

The "One-Kit-Policeless" position has been interpreted in such a way as to banish the scope of claims negotiations to the point where it is impossible for Aboriginal people to discuss matters differently than within the realm of government. The current review of federal claims policy will clarify any ambiguity that exists.

In developing a co-ordinated approach to constitutional and political development in the N.W.T., it is necessary to consider approaches that will not impede progress but will allow matters to be worked out jointly.

STRATEGIES

1. Since the resolution of claims is a matter to be decided between the Government of Canada and the Aboriginal people of the N.W.T., the GNWT's role in comprehensive claims negotiations should not change. Also, since the transfer of powers will happen to be decided between the Government of Canada (except where Aboriginal rights are concerned) and the GNWT, the role of Aboriginal organizations in devolution discussions should be consistent with that of the government's role in the claims negotiations.
2. Agreements should be negotiated with the Dene/Metis and the Inuit to determine those devolution matters which involve claims being negotiated at the claims table and those that do not.

CURRENT CONSTITUTIONAL AND POLITICAL ISSUES

Process

The processes used to settle aboriginal claims, to transfer provincial-type powers, and to develop future constitutions for the Northwest Territories will provide the basis for political and constitutional change in the N.W.T. It is important that mechanisms are put in place to resolve conflicts.

CONSIDERATIONS

The Government of Canada has made commitments to settle claims being made by the Aboriginal people and at the same time to transfer powers to the Government of the Northwest Territories. However, certain aboriginal rights and interests are being negotiated through the claims process which will effect future powers and responsibilities of government. Similarly, there are powers being negotiated through the devolution process which may affect aboriginal rights.

The "In All Fairness" policy has been interpreted in such a way so as to broaden the scope of claims negotiations to the point where it is now possible for the Aboriginal people to discuss matters previously only within the realm of government. The current review of federal claims policy will clarify any ambiguity that exists.

In developing a co-ordinated approach to constitutional and political development in the N.W.T., it is necessary to consider approaches that will not impede progress but will allow matters to be worked out jointly.

STRATEGIES

- 1) Since the resolution of claims is a matter to be decided between the Government of the Canada and the Aboriginal people of the N.W.T., the GNWT's role in comprehensive claims negotiations should not change. Also, since the transfer of powers is a matter to be decided between the Government of Canada (except where aboriginal rights are concerned) and the GNWT, the role of aboriginal organizations in devolution discussions should be consistent with that of the government's role in the claims negotiations.
- 2) Agreements should be negotiated with the Dene/Metis and the Inuit to determine those devolution matters which involve rights being negotiated at the claims table and those that do not.

- 3) Other informal structures (such as the Dene/Metis/ Government of Canada/GNWT Working Group on Land and Water Management) be established where needed to deal with areas which are of common interest to both aboriginal organizations and the GNWT. The purpose of these informal structures will be to allow new concepts and ideas to be explored in detail away from the main claims table.

Division

The Constitutional Alliance has been established to develop constitutional proposals for each of the two new territories and make a recommendation on the location of a boundary to the people of the N.W.T. The GNWT is being asked, by the Inuit, to prepare for division and to ensure that the transfer of powers to the GNWT does not prejudice division.

CONSIDERATIONS

The Constitutional Alliance was established independent from both the Legislative Assembly and Government. The role of government is to monitor the activities of the Alliance and its forums and to provide information and assistance as requested. If the GNWT were to pursue constitutional development and division by setting up political structures, it would be in conflict with the mandate of the Alliance. However, the GNWT can plan for division in a number of ways which can facilitate an orderly transition once the Government of Canada has given final approval to dividing the N.W.T.

It will also be necessary to ensure that the transfer of powers to the GNWT not prejudice division or the development of two constitutions for new territories.

STRATEGIES

- 1) A Division Secretariat will be established reporting to the Government Leader with the dual mandate of advising Executive Council of potential impacts of government decisions on the division of the NWT and the development of new constitutions and preparing for the division of the N.W.T.
- 2) A Liaison Committee on political and constitutional development will be established to provide advice to the Executive Council. This committee would include representatives from the GNWT and the Alliance. (See diagram 3.)

Ministerial Committee

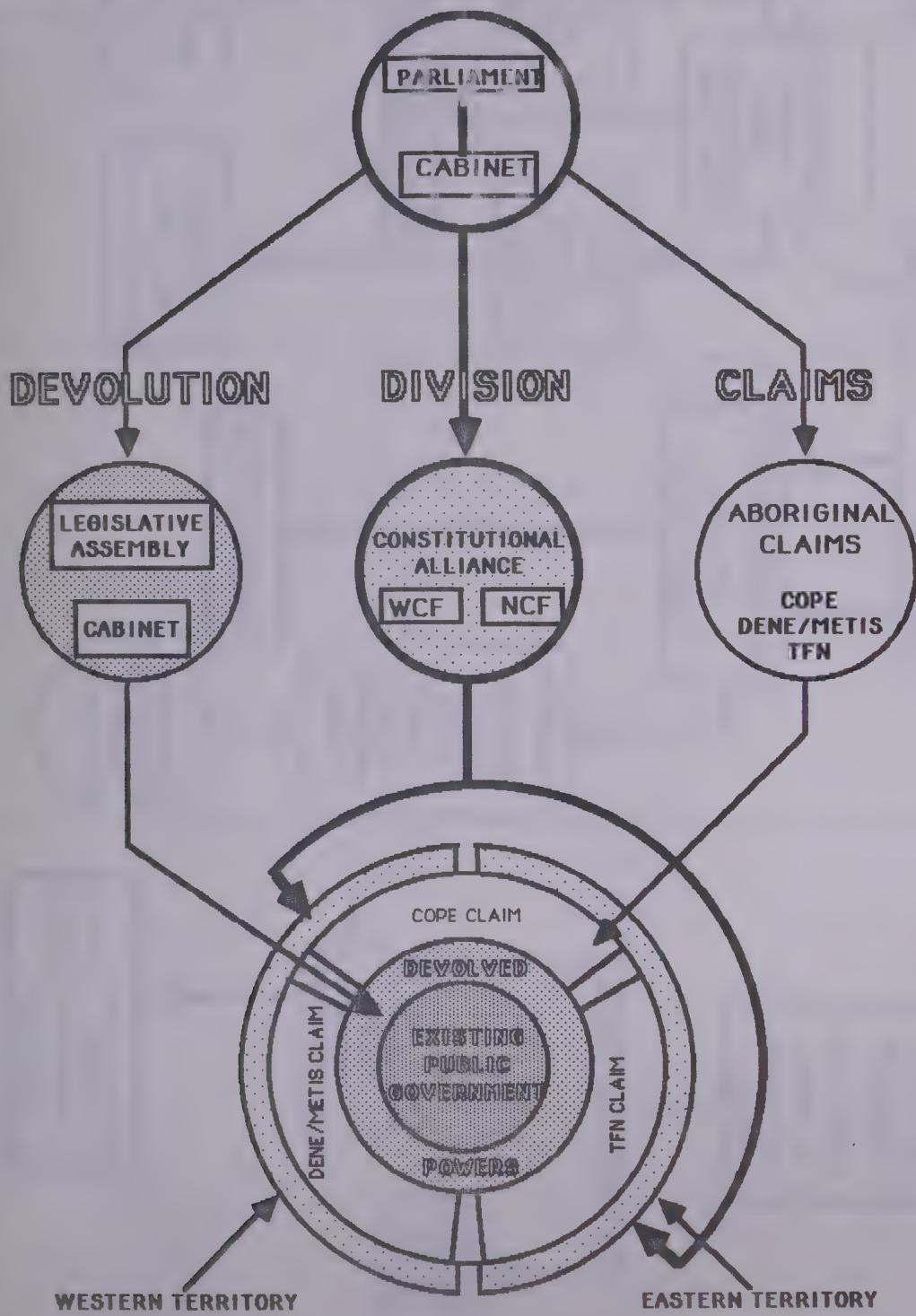
The Executive Council established a Policy Committee on Aboriginal Rights and Constitutional Development in 1982 to provide policy direction to the bureaucracy on comprehensive aboriginal claims and political and constitutional development. Since 1982, the pace and scale of political and constitutional development has increased. The dynamics of these developments have also changed.

CONSIDERATIONS

The two outstanding comprehensive aboriginal claims negotiations are now moving ahead at a considerable pace. The implementation of the Inuvialuit settlement is a new factor that must be given close attention to ensure success. The Constitutional Forums continue their work on building constitutions for new territories while the resolution of the boundary remains an elusive quest. The Federal government has over the past year indicated a willingness to devolve authority and responsibility to the GNWT so long as the north can reach a consensus position on what is appropriate to transfer. All these initiatives are interrelated and are proceeding at once although not at the same pace. The linkages between them and an understanding of them has become important to the transforming change that is taking place in the NWT. A major function of the ministerial committee will be to provide clear direction to ensure that these linkages are understood and taken fully into consideration by government as it participates in this change.

In addition to the co-ordination provided at the ministerial level through the ministerial committee, it is important to ensure similar co-ordination occurs at the officials level. At present, an informal working group made up of staff from the Devolution Office, the Aboriginal Rights and Constitutional Development Secretariat, the Department of Justice and the Energy, Mines & Resources Secretariat meets frequently to deal with overlapping political issues. Because of the unresolved state of certain constitutional and political development initiatives, including devolution, and the experimental nature of the claims working table discussions, it is premature to make permanent structural changes at this time. However, once these issues are resolved, it will be necessary to review the current organization.

CONSTITUTION BUILDING: PROCESS



DIVISION

CLAIMS

DEVOULATION

DIAGRAM 2

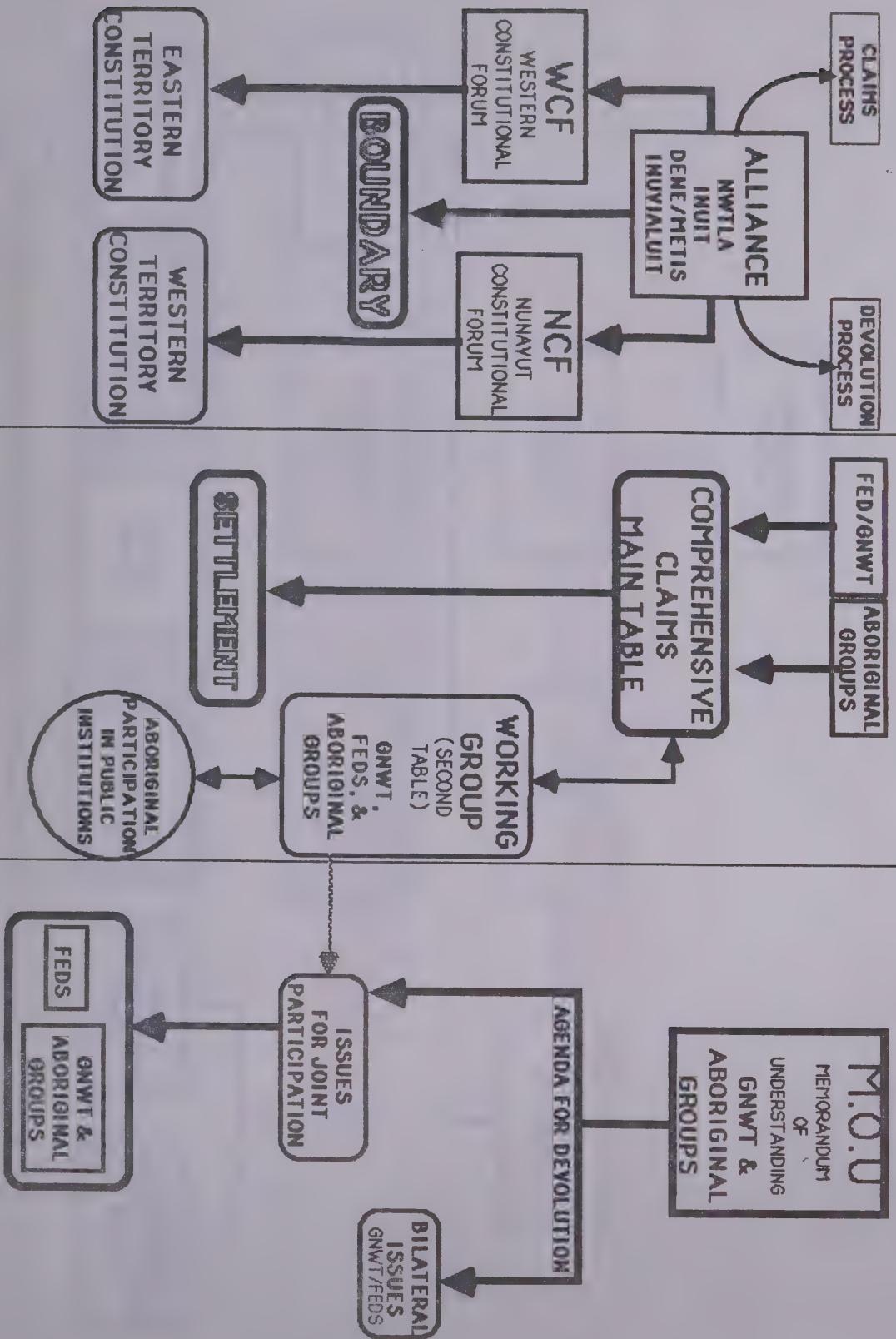
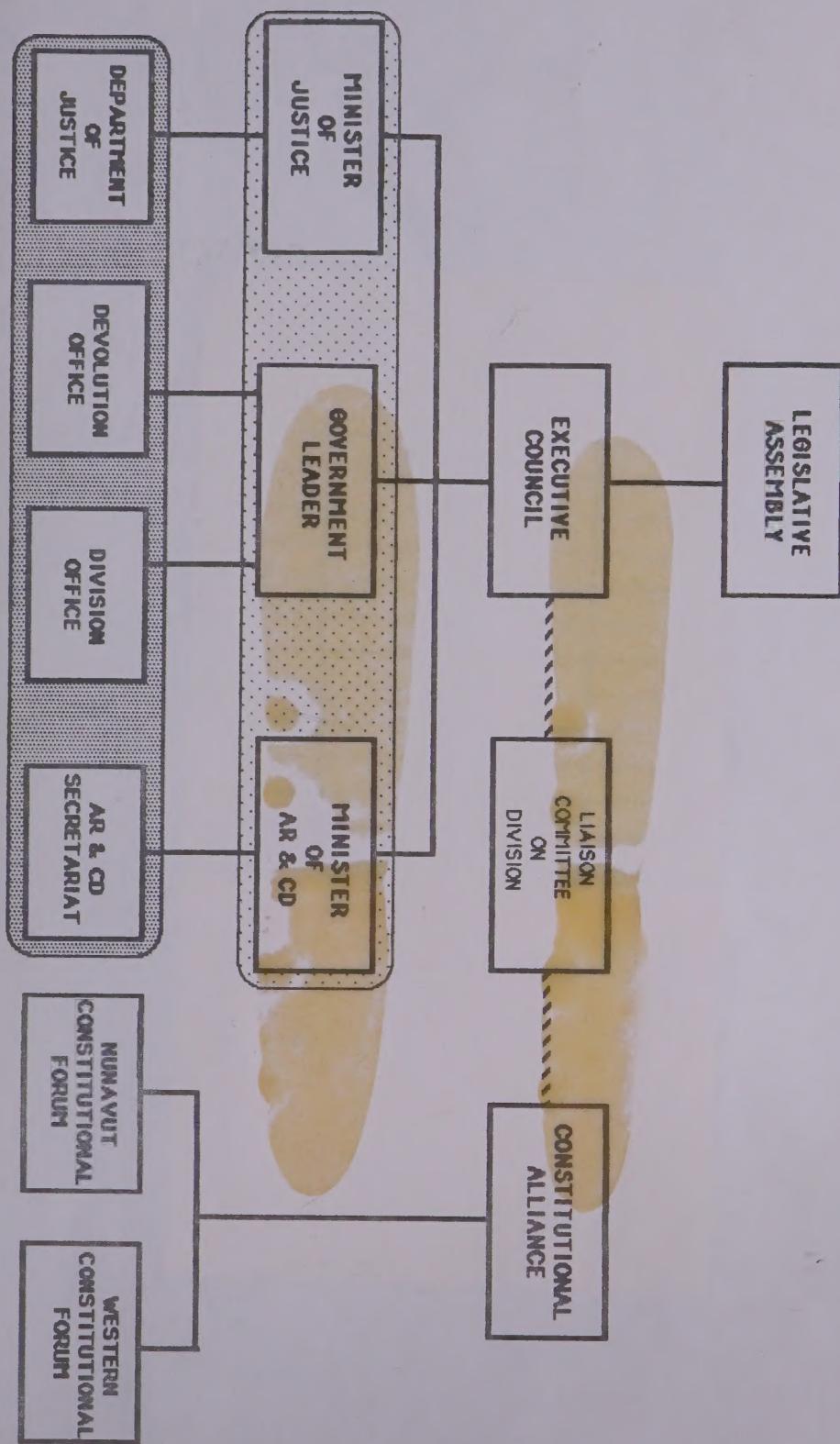


DIAGRAM 3



■ MINISTERIAL WORKING GROUP (Government Leader, Ministers of AR & CD, Justice and other

Ministers such as the Minister of Finance as appropriate)

■ STAFF WORKING GROUP

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A sessional paper : constitutional and political development in the Northwest Territories.

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